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and Magnolia Hi-Fi, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE TFT-LCD (FLAT PANEL)
ANTITRUST LITIGATION

Master File No. 07-MD-1827 SI
MDL No. 1827

This Document Relates To:

Individual Cases:
Case No. 10-CV-4572

*Best Buy Co., Inc. v. AU Optronics Corp., et
al.,*
Case No. 10-CV-4572 SI

**THE BEST BUY PLAINTIFFS'
NOTICE OF MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION FOR FEES AND COSTS**

Date: November 1, 2013
Time: 9:00 a.m.
Courtroom: 10, 19th Floor

The Honorable Susan Illston

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

2 NOTICE IS HEREBY GIVEN that on November 1, 2013 at 9:00 a.m. or as soon
3 thereafter as the matter may be heard by the Honorable Susan Illston, Plaintiffs Best Buy
4 Co., Best Buy Purchasing LLC, Best Buy Enterprise Services Inc., Best Buy Stores L.P.,
5 Bestbuy.com LLC, and Magnolia Hi-Fi, Inc. (“the Best Buy Plaintiffs”) seek an order
6 awarding the Best Buy Plaintiffs’ their reasonable attorneys’ fees and expenses pursuant
7 to Fed. R. Civ. P. 54(d)(2), Local Rule 54-5, and 15 U.S.C. § 15.

8 Counsel for the Best Buy Plaintiffs and Defendant HannStar Display Corporation
9 (“HannStar”) have met and conferred regarding this motion in satisfaction of Local Rule
10 7-3. (See Declaration of Roman Silberfeld ¶19.) This motion is based on this Notice of
11 Motion and Memorandum of Points and Authorities, the Declarations of Donald W.
12 Carlson, Roman Silberfeld and Michael Geibelson, the records and files of this action and
13 any other matters that may properly be subject to judicial notice, and any oral argument
14 that the Court may choose to permit.

15 I.

16 INTRODUCTION

17 This Court entered judgment in favor of the Best Buy Plaintiffs and against
18 HannStar on September 4, 2013, following a six week trial in which a ten person jury
19 unanimously found that HannStar had participated in a conspiracy to fix the prices of
20 LCD panels thereby injuring the Best Buy Plaintiffs, entitling them to an award of
21 \$7,471,943.00 in damages.¹

22 The judgment followed nearly three years of active litigation involving a complex
23 set of facts, dozens of witnesses, numerous experts and millions of documents—most of
24 which had to be translated into English. Pre-trial proceedings encompassed discovery
25 motions, dispositive motions and other motions involving multiple parties and complex
26 legal issues. To the extent possible, the Best Buy Plaintiffs coordinated their legal work

27 _____
28 ¹ The Best Buy Plaintiffs have concurrently filed a motion to amend the September 4, 2013
Judgment to reflect the mandatory trebling required by federal and state antitrust law.

1 with other plaintiffs' counsel and, when possible, shared costs, in order to pursue their
2 claims in an efficient and cost effective manner.

3 Federal and state antitrust statutes provide for an award of attorneys' fees and costs
4 to the Best Buy Plaintiffs following the entry of a Judgment in its favor. Accordingly, the
5 Best Buy Plaintiffs seek an award of attorneys' fees and costs incurred as reasonable and
6 necessary in the successful prosecution of their antitrust claims against HannStar.²

7 II.

8 ARGUMENT

9 Minnesota Stat. § 325D.57 provides in relevant part: "Any person, any
10 governmental body, or the state of Minnesota or any of its subdivisions or agencies,
11 injured directly or indirectly by a violation of sections 325D.49 to 325D.66, shall recover
12 three times the actual damages sustained, together with costs and disbursements, including
13 reasonable attorneys' fees." Section 4 of the Clayton Act states that, "any person who shall
14 be injured in his business or property by reason of anything forbidden in the antitrust laws
15 may sue therefor . . . and shall recover threefold the damages by him sustained, and the
16 cost of suit, including a reasonable attorney's fee." 15 U.S.C. § 15.

17 Reasonable fees and costs include fees for "every item of service which, at the time
18 rendered, would have been undertaken by a reasonable and prudent lawyer to advance or
19 protect his client's interest in the pursuit of a successful recovery of anti-trust damages."
20 *Twin City Sportservice, Inc., v. Finley & Co., Inc.*, 676 F.2d 1291 (9th Cir. 1982). This
21 award is mandatory—not discretionary—as the purpose is to insulate a plaintiff's
22 damages recovery from expenditures of fees or costs, consistent with section 4's purpose
23 to encourage private persons to undertake enforcement of antitrust laws. *Perkins v.*
24 *Standard Oil Co.*, 474 F.2d 549 (9th Cir. 1973), cert. denied, 412 U.S. 940, amended on
25 other grounds, 9th Cir. 487 F.2d 672.

26
27
28 ² The instant motion includes taxable costs that the Best Buy Plaintiffs seek to recover in their
concurrently filed Bill of Costs.

The customary method for determining the reasonableness of attorney's fees is known as the lodestar method. *Masimo Corp. v. Tyco Health Care Group, L.P.*, 2007 U.S. Dist. LEXIS 101987 (C.D. Cal. Nov. 5, 2007) (applying the lodestar method to determining reasonable attorneys' fees under 15 U.S.C. §15); *Morales v. San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). According to the lodestar method, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Court may make upward or downward adjustments to the "presumptively reasonable" lodestar figure. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975).

In determining a reasonable amount of attorney's fees, factors to consider include: "(1) the novelty and complexity of the issues, (2) the special skill and experience of counsel, (3) the quality of representation, ... [and] (4) the results obtained." *Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1464 (9th Cir. 1988)); *see also Yahoo!, Inc. v. Net Games, Inc.*, 329 F. Supp. 2d 1179, 1182 (N.D. Cal. 2004) (considering the contingent nature of the fee agreement as one of the factors that have been deemed subsumed in the initial lodestar calculation). A court, however, is not required to consider every factor. *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1158 (9th Cir. 2002).

A. The Best Buy Plaintiffs' requested fees and costs are reasonable.

The complexity of the issues in this case supports the reasonableness of the Best Buy Plaintiffs' request for an award of fees and costs. The activities which gave rise to this lawsuit began as early as 1998 and continued through 2006. The price-fixing conspiracy involved multiple parties both in the United States and abroad, criminal prosecutions, pleas, convictions, hundreds of witnesses, and years of litigation. As this Court is well aware, the Best Buy Plaintiffs responded to multiple summary judgment motions seeking to dispose of issues related to the scope of the conspiracy, the defenses of downstream pass-on and mitigation, and the corporate relationships between the conspirator families under the *ATM Fee* decision, amongst other issues.

1 The bulk of the pre-trial work on this case involved responding to defendants'
2 discovery and to proving the extent and scope of the LCD price fixing conspiracy. The
3 fees and costs submitted with this motion reflect that, throughout the pendency of this
4 case, both defendants and plaintiffs have worked collectively to complete discovery and to
5 brief the voluminous motions that have come before Special Master Quinn and this Court
6 as expeditiously as possible. In this regard, it is important to note that HannStar was
7 specifically designated by the defendant group to direct discovery of the Best Buy
8 Plaintiffs. In such capacity, HannStar noticed twelve fact depositions of Best Buy
9 employees and HannStar also took the lead for the defendants in deposing the experts
10 hired by the Best Buy Plaintiffs.

11 Over the course of their pre-trial involvement in this litigation, the Best Buy
12 Plaintiffs worked closely with counsel for the plaintiff classes as well as counsel for other
13 direct action plaintiffs to efficiently prosecute this case. As set forth in the attached
14 declarations of Roman Silberfeld and Michael Geibelson, the detailed billing records of
15 the Robins, Kaplan, Miller & Ciresi LLP attorneys who have worked on this case were
16 carefully reviewed, as were the costs expended in prosecuting this litigation.

17 As this Court is aware, the trial of this action extended from July 22, 2013 to
18 September 3, 2013. At trial, the Best Buy Plaintiffs were required to, and did, establish
19 the existence and scope of the overarching conspiracy as well as HannStar's participation
20 in the conspiracy. Over 44 witnesses were examined at trial, either in person or via video
21 presentation, including multiple experts. In addition to the lengthy preparation required to
22 examine live witnesses, often through interpreters, the video presentations required
23 extensive review, cutting and re-cutting, following the submission of objections ruled on
24 by this Court. During trial the Best Buy Plaintiffs were required to brief multiple motions
25 filed jointly by the defendants, including multiple Rule 50 motions, as well as their own
26 motions aimed at precluding defendants from using unauthorized methods of examination
27 and improper evidence.
28

As detailed in the Declaration of Donald W. Carlson, counsels' rates charged in successfully pursuing the Best Buy Plaintiffs' claims against HannStar are reasonable rates in the Northern District of California considering the skill and experience of the attorneys representing the Best Buy Plaintiffs. Litigation counsel has extensive experience in jury trials as well as specific experience in complex antitrust matters. Lead counsel, Roman Silberfeld is an experienced trial attorney and member of the International Academy of Trial Lawyers who has tried more than 80 jury trials over the course of his career. The remaining members of the litigation team are also highly qualified trial and litigation attorneys and their relevant experience is discussed in more detail in their professional biographies. See Declaration of Michael Geibelson at Exhibit B. The experience and the quality of counsel representing the Best Buy Plaintiffs in this case further supports the reasonableness of the fee request.

Counsel for the Best Buy Plaintiffs has segregated out from this fee application, to the extent possible, any costs and fees directly related to separate proceedings involving Toshiba as well as fees relating to pre-trial settlements with other defendants, among others. Based upon the review of the detailed billing entries, various entries were removed from the detailed billing report totalling 3,600.9 hours with a time value of \$1,255,815. These amounts reflect reductions of 11.9% (hours) and 11.59% (value) respectively. These reductions leave reduced totals of hours and time of 26,652.1 (hours) and \$9,582,221.00 (value). (See Declaration of Michael Geibelson ¶16.)

In addition, recognizing that some portion of the remaining time (after reductions) may be attributable to tasks which are difficult or impossible to distinguish from those which are indivisible from time that is properly claimed, the Best Buy Plaintiffs have applied an additional reduction of 5% for all such items. This additional "catch-all" 5% reduction represents 1332.6 hours and \$479,111.05 and leaves a remaining total of 25,319.50 hours and \$9,103,109.95. It is this amount in fees that is claimed by the Best Buy Plaintiffs in its motion. (See Declaration of Michael Geibelson ¶17.)

As revised, and after all deductions, the Best Buy Plaintiffs seek recovery of fees for a total of 25,319.50 hours worked in the total sum of \$9,103,109.95. The Best Buy Plaintiffs also seek recovery of the costs of suit incurred by them which, after all reductions, total \$8,550,525.26. Together, these amounts total \$17,653,635.21. (See Declaration of Roman Silberfeld ¶16.)

B. The Best Buy Plaintiffs' Right to an Award of Fees and Costs is Not Impacted By Settlements with Other Defendants.

“[T]he effect of a settlement on the plaintiff's recovery of compensatory damages has no effect on a plaintiff's right to recover attorneys' fees.” *See Funeral Consumers Alliance, Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 336-342 (5th Cir. 2012); *Gulfstream III Assocs., Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 419 (3d Cir. 1993); *Sciambra v. Graham News*, 892 F.2d 411, 415 (5th Cir. 1990).

In *Sciambra*, the Fifth Circuit found that in order to recover attorneys' fees pursuant to section 4, a plaintiff must only “show with some particularity an element of actual damage caused by the defendant's violations of the antitrust laws.” *Sciambra*, 892 F.2d at 416. “Nothing in section 4 indicates that the availability of one type of relief is dependent on the award of another. Indeed, a plain reading of section 4 suggests that the only issue relevant in determining the recoverability of attorneys' fees is whether the plaintiff has been ‘injured in his business or property.’” *Id.* (internal quotation omitted.) In *Sciambra*, the Court held that the plaintiff's recovery of compensatory damages through settlements which completely off-set any award at trial had “no effect on a plaintiff's right to recover attorneys' fees.” *Id.* at 416.

In *Gulfstream III*, the Third Circuit agreed with the Fifth Circuit's reasoning in *Sciambra* holding:

An antitrust plaintiff who has proven to the satisfaction of the fact finder that defendant violated the antitrust laws and has established the fact of damage has established the prerequisites for defendant's liability and its own entitlement

1 to attorneys' fees [...]. Although in almost all cases an
 2 award of compensatory damages will accompany an award of
 3 section 4 attorneys' fees, the latter is not dependent upon the
 4 former. As the court in *Sciambra* noted, 'an antitrust defendant
 5 that causes injury should not be spared liability for attorneys'
 6 fees simply because a previous settlement turns out in
 7 retrospect to preclude a compensatory damage award.' [...]
 8 Any other holding would not only deter the private
 9 prosecution of antitrust violations, which is a critical element
 10 in the antitrust enforcement scheme and the primary reason
 11 attorneys' fees are mandatory under the statute, [...] but could
 12 also deter plaintiffs from early settlements with some
 13 defendants.

14 *Id* at 419.

15 Last year, in *Funeral Consumers*, the Fifth Circuit again confirmed a plaintiff's
 16 right to recover attorneys' fees where the amount of a judgment is completely offset by
 17 settlements and reaffirmed the logic of *Sciambra* and *Gulfstream III*. *See Funeral*
 18 *Consumers Alliance, Inc.*, 695 F.3d at 336-342. The Court also reiterated its earlier
 19 holdings, and the holdings of other circuits, that a plaintiff's right to attorneys' fees under
 20 the Clayton Act "is accorded to the injured party, not his counsel." *Id.* at 337.

21 In cartel cases, like this one, there are often multiple conspirators involved, and
 22 early settlements facilitate the efficiency of trying these cases. In this case, the Best Buy
 23 Plaintiffs initially sued as many as 10 defendant corporate families, before settling with all
 24 but two before trial. Such settlements do not, and should not, extinguish the Best Buy
 25 Plaintiffs' entitlement to an award of fees and costs for their successful prosecution of
 26 HannStar for violations of federal and state antitrust law.

27 The same analysis applies to the Best Buy Plaintiffs' Minnesota state law claims as
 28 "Minnesota courts have consistently held that Minnesota antitrust law is to be interpreted

consistently with the federal courts' construction of federal antitrust law.” *See State by Humphrey v. Alpine Air Products, Inc.*, 490 N.W.2d 888, 891 (Minn. Ct. App. 1992) (citing *Keating v. Philip Morris, Inc.*, 417 N.W.2d 132, 136 (Minn. App. 1987)).

III.

CONCLUSION

For these reasons, the Court should award the Best Buy Plaintiffs’ reasonable fees of \$9,103,109.95 and costs of \$8,550,525.26 for a total of \$17,653,635.21.

Dated: September 18, 2013

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: /s/ Roman M. Silberfeld

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